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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 703(e) of the Telecommunications Act of 1996	)	CC Docket 97-151
	)	
Amendment of the Commission's Rules and Policies Governing Pole Attachments	)	

COMMENTS OF SPRINT LOCAL TELEPHONE COMPANIES ON SPECIFIC QUESTIONS

The Sprint Local Telephone Companies submit their Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") released on August 12, 1997 in the above-referenced docket. In the NPRM the Commission seeks comments on implementation of the Act's requirement at Section 703[1] that pole attachment rates for telecommunications carriers be just, reasonable, and nondiscriminatory.

In its Heritage[2] decision the Commission determined that Section 224 protects a cable television service provider's pole attachments even when those attachments support equipment used to provide nonvideo services in addition to traditional cable television service and that an attempt by a utility to impose a separate charge for pole attachments for nontraditional cable television services violates Section 224's prohibition against unjust and unreasonable rates for cable television provider's pole attachments. In the NPRM (¶ 13) the Commission seeks comments on whether it should extend its holding in Heritage to other situations where utilities may attempt to limit the use of attachment space by telecommunications service providers.

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[1] Telecommunications Act of 1996 ("Act"), Pub. L. No. 104-104, 110 Stat. 61, 149-151, signed February 8, 1996 (codified at 47 U.S.C. § 224).

[2] See Heritage Cablevision Assocs. Of Dallas, L.P. v. Texas Utils. Elec. Co., 6 FCC Rcd. 7099 (1991), recon. dismissed, 7 FCC Rcd. 4192, aff'd sub nom. Texas Utils. Elec. Co. v. FCC, 997 F.2d 925 (D.C. Cir. 1993).

The Commission should extend its Heritage decision so as to prevent utilities from placing unreasonable restrictions on the use of pole attachments by permitted attachees, including telecommunications service providers. If a telecommunications service provider deploys a single facility, on a single attachment, capable of providing traditional telecommunications services, cable television or other video services, and enhanced services there should only be, one attachment charge. Allowing utilities to prohibit such multiple use attachments or limit same through separate charges would be unreasonable and discriminatory and would thwart Congress' intent to foster the rapid deployment of new communications technology and to foster competition between traditional cable television service providers and telecommunications carriers, as well as others, in all forms of communications.[3]

The Commission also seeks comment (¶ 15) as to the treatment of overlashing by the original attacher and any third parties that overlash the original attacher. Each attacher, including any overlasher and the utility owner that has attachments, should be counted as a separate attacher for rate establishment purposes. Each separate attachment must be counted for rate purposes to ensure just, reasonable and nondiscriminatory rates among all attachees.

Further, each attacher, original or overlasher, must have an attachment agreement with the utility that owns or controls the pole. The utility must deal directly with each attacher so that the utility can properly protect itself, other attachees, and the public with regard to attachments on its poles. The utility must know what entities are on its poles in order to ensure that adequate insurance protection is in place in case and liability is properly assigned in case of accidents. Additionally, if overlashers are not required to deal

[3] Notwithstanding that there must be only one attachment charge in multiple use situations, Sprint acknowledges that this charge may be different depending on the service provided using the attachment. This is so because § 224(d)(3) provides that the pre-Act formula for determining the rate for cable attachees that are not providing telecommunications services continues to apply. However, the new formula called for by §224(e) applies to telecommunication carriers and to cable providers to the extent they are providing telecommunications services.

directly with the utility that owns or controls the pole, it may become difficult, if not impossible, for the utility to police the number of attachees and ensure just, reasonable, and nondiscriminatory rates among all attachees.

The Commission proposes that each utility develop a presumptive average number of attachers on one of its poles for purposes of rate calculation as opposed to developing a pole-by-pole inventory (¶ 26). The Commission also proposes that the utility be required to provide the methodology and information by which a utility's presumption was determined. Sprint supports the Commission's proposals. A pole-by-pole inventory requirement would be unnecessary and extremely burdensome. Requiring the utility to provide its methodology and information used to develop the presumption to attaching telecommunications carriers will adequately protect attaching carriers from unreasonable or discriminatory attachment rates.

The Commission seeks comments on whether a utility should be allowed to develop different presumptions for the urban, suburban, and rural areas in its service territory (¶ 26.) Sprint believes the development of such distinct areas or zones is appropriate and should be allowed. In the foreseeable future, the number of attachers will vary greatly between these three distinct areas as competition, and thus the number of attachers, is likely to develop first in the more dense urban areas. Again, by requiring the utility to provide telecommunications carriers with the methodology and information used to develop attachment rates in these distinct areas, the interests of those carriers in obtaining reasonable and nondiscriminatory rates will be adequately protected.

Finally, the Commission suggested that, as an alternative to the utility determining a presumptive average number of attachers on one of its poles, the Commission could determine the average number of attachments (¶ 27.) This is not a viable alternative. The administrative burden on the Commission of developing and maintaining the nationwide data would far outweigh any benefit to be gained. Furthermore, requiring each utility to provide each attaching telecommunications carrier with the methodology and information

behind the utility developed number provides an adequate safeguard to ensure the accuracy of such number.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 26th day of September, 1997, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Local Telephone Companies on Specific Questions" in the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996 and Amendment of the Commission's Rules and Policies Governing Pole Attachments, CC Docket No. 97-151, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

Melinda L. Mills

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